



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2014-0022; FRL- 9914-53-Region-3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Redesignation Requests, Associated Maintenance Plans, and Motor Vehicle Emissions Budgets for the Delaware Portion of the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standards, and the 2007 Comprehensive Emissions Inventory for the 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Delaware's requests to redesignate to attainment the Delaware portion of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area (hereafter "the Philadelphia Area" or "the Area") for both the 1997 annual and the 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS or standards). EPA is also approving as revisions to the Delaware State Implementation Plan (SIP), the associated maintenance plans to show maintenance of the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS through 2025 for the Delaware portion of the Area. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) included in Delaware's maintenance plans for the Delaware portion of the Area for both the 1997 annual and 2006 24-hour PM_{2.5} standards. EPA is also determining that the Delaware portion of the Philadelphia Area continues to attain both the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS. In addition, EPA is approving the 2007 emissions inventory for the Delaware portion of the Area for the 2006 24-hour PM_{2.5} NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0022. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814-2181, or by e-mail at pino.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 2012, the Delaware Department of Natural Resources and Environmental Control (DNREC) formally submitted two separate requests to redesignate the Delaware portion of the Philadelphia Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS, respectively. With the redesignation requests, DNREC submitted maintenance plans as SIP revisions to ensure continued attainment of the standards throughout the Delaware portion of the Area over the next 10 years. Each maintenance plan contains

MVEBs for the Delaware portion of the Area for transportation conformity purposes. The December 12, 2012 submittal for the 2006 24-hour PM_{2.5} NAAQS also includes a 2007 comprehensive emissions inventory to meet the requirement of section 172(c)(3) of the CAA for the 2006 24-hour PM_{2.5} NAAQS.

On April 11, 2014 (79 FR 20139), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. In the NPR, EPA proposed approval of Delaware's redesignation requests for the Delaware portion of the Philadelphia Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA also proposed approval of the associated maintenance plans as SIP revisions for the 1997 annual and 2006 24-hour PM_{2.5} standards, and the MVEBs included in Delaware's maintenance plans for the Delaware portion of the Area for both the 1997 annual and 2006 24-hour PM_{2.5} standards. In addition, EPA proposed approval of the 2007 emissions inventory for the Delaware portion of the Area for the 2006 24-hour PM_{2.5} NAAQS. Finally, EPA proposed that the Philadelphia Area continues to attain both the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS.

In the April 11, 2014 NPR, EPA addressed the effects of two decisions of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court): The D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the 1997 annual PM_{2.5} standard and the D.C. Circuit Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR). However, subsequent to publication of the NPR, United States Supreme Court reversed the D.C. Circuit decision vacating and remanding CSAPR in *EPA v. EME Homer City Generation, L.P.*, 134 S.Ct. 1584 (2014).

EPA has considered the recent decision from the U.S. Supreme Court regarding CSAPR, and has concluded that the decision does not alter the Agency's decision to redesignate the Delaware portion of the Philadelphia Area to attainment for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA promulgated CSAPR (76 FR 48208, August 8, 2011) to replace the Clean Air Interstate Rule (CAIR), which has been in place since 2005. *See* 76 FR 59517. The rules require significant reductions in emissions of sulfur dioxide (SO₂) and oxides of nitrogen (NO_x) from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. The D.C. Circuit Court initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). After staying implementation of CSAPR on December 20, 2011 and instructing EPA to continue to implement CAIR in the interim, on August 21, 2012, the D.C. Circuit Court issued a decision to vacate CSAPR, with further instruction to continue administering CAIR "pending the promulgation of a valid replacement."

As stated in the April 11, 2014 NPR, Delaware does not rely on either CAIR or CSAPR for emission reductions that contributed to the Delaware portion of the Philadelphia Area's attainment of the 1997 and 2006 PM_{2.5} NAAQS, nor does the State rely on either of the rules in its maintenance plans. However, because CAIR was promulgated in 2005 and incentivized sources and states to begin achieving early emission reductions, the air quality data examined by EPA in issuing the final determinations of attainment for the Philadelphia Area for the 1997 and

2006 PM_{2.5} NAAQS (77 FR 28782, May 16, 2012 and 78 FR 882, January 7, 2013)) and the air quality data from the area since 2005 necessarily reflect reductions in emissions from upwind sources as a result of CAIR.

Nonetheless, in this case, EPA believes that it is appropriate to redesignate the Delaware portion of the Philadelphia Area. As stated in the April 11, 2014 NPR, modeling conducted by EPA during the CSAPR rulemaking process, which used a baseline emissions scenario that “backed out” the effects of CAIR, *see* 76 FR at 48223, projected that the counties in the Philadelphia Area would have PM_{2.5} levels below the 1997 annual and 2006 24-hour PM_{2.5} NAAQS in both 2012 and 2014 without taking into account emissions reductions from CAIR or CSAPR. *See* “Air Quality Modeling Final Rule Technical Support Document,” Appendix B, pages B-37, B-51, B-57, B-58, B-66, B-80, B-86. This modeling is available in the docket for this rulemaking action. In addition, the 2010-2012 quality-assured, quality-controlled, and certified monitoring data for the Philadelphia Area confirms that 2012 PM_{2.5} annual design values for each monitoring site in the Area remained well below the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, and thus the entire Area continued to attain the standard in 2012. As stated in the NPR, 2010-2012 annual and 24-hour design values for the Philadelphia Area are 13.1 micrograms per cubic meter (µg/m³) and 31 µg/m³, respectively and preliminary 2011-2013 annual and 24-hour design values of 12.3 µg/m³ and 28 µg/m³, respectively. In addition, as stated in the April 11, 2014 NPR, emissions of SO₂ and NO_x, the two pollutants targeted by CAIR and CSAPR, have decreased greatly since the Philadelphia Area was designated as nonattainment for the 1997 and 2006 PM_{2.5} NAAQS, and those reductions are projected to continue throughout the maintenance period. Between 2002 and 2007, NO_x and SO₂ emissions were reduced by 25 percent and 70

percent, respectively, in the Delaware portion of the Philadelphia Area. For maintenance of the 1997 annual NAAQS, between 2007 and 2025, NO_x and SO₂ emissions are projected to decrease by 40 percent and 54 percent, respectively, in the Delaware portion of the Philadelphia Area. For maintenance of the 2006 24-hour NAAQS, between 2008 and 2025, NO_x and SO₂ emissions are projected to decrease by 38 percent and 61 percent, respectively, in the Delaware portion of the Philadelphia Area. These reductions are due to a combination of strong state and federal control measures that were listed in the NPR, and do not include any emission reductions from CAIR or CSAPR.

The status of CSAPR is not relevant to these redesignations. CSAPR was promulgated in June 2011, and the rule was stayed by the D.C. Circuit Court just six months later, before the trading programs it created were scheduled to go into effect. Therefore, the Philadelphia Area's attainment of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS cannot have been a result of any emission reductions associated with CSAPR. In sum, neither the current status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of these redesignation requests for the Delaware portion of the Philadelphia Area.

Specific details of Delaware's submittals and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No adverse public comments were received on the NPR. EPA did receive one public comment in support of this rulemaking action, which can be found in the publicly available docket for this rulemaking action.

II. Final Action

EPA is approving Delaware's requests to redesignate the Delaware portion of the Philadelphia

Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS. EPA has evaluated Delaware's redesignation requests and determined that upon approval of the 2007 comprehensive emissions inventory for the 2006 24-hour PM_{2.5} NAAQS proposed as part of this rulemaking action, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both standards. As stated in greater detail in the April 11, 2014 NPR, EPA believes that the monitoring data demonstrate that the entire Philadelphia Area is attaining and will continue to attain the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA is also proposing to approve the associated maintenance plans for the Delaware portion of the Area as a revision to the Delaware SIP for the 1997 annual and 2006 24-hour PM_{2.5} standards because they meet the requirements of CAA section 175A for both standards. For transportation conformity purposes, EPA is also proposing to approve MVEBs for both the 1997 annual and 2006 24-hour PM_{2.5} standards. Final approval of the redesignation requests would change the official designations of the Delaware portion of the Philadelphia Area for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS, respectively, found at 40 CFR part 81, from nonattainment to attainment, and would incorporate into the Delaware SIP the associated maintenance plans ensuring continued attainment of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS in the Delaware portion of the Area for the next 10 years, until 2025.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond

those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, in which EPA is approving of the redesignation requests and maintenance plans for the Delaware portion of the Philadelphia Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, MVEBs included in Delaware's maintenance plans for the Delaware portion of the Area for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, and the 2007 comprehensive emissions inventory for the 2006 24-hour PM_{2.5} NAAQS, may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 11, 2014.

W.C. Early,
Acting Regional Administrator,
Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I-- Delaware

2. In § 52.420, the table in paragraph (e) is amended by adding entries for the 1997 Annual and the 2006 24-Hour PM_{2.5} Maintenance Plans for the Delaware Portion of the Philadelphia-Wilmington, PA-NJ-DE Area (New Castle County) at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) ***

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*

Maintenance plan contained in “Delaware Redesignation Request and Maintenance Plan Under the 1997 Annual PM _{2.5} National Ambient Air Quality Standard For the New Castle County Portion of the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area for Fine Particles,” dated November 27, 2012	New Castle County	12/12/2012	<u>[Insert Federal Register publication date] [Insert page number where the document begins]</u>	See §52.427(d)
Maintenance plan contained in “Delaware Redesignation Request and Maintenance Plan Under the 2006 Daily PM _{2.5} National Ambient Air Quality Standard For the New Castle County Portion of the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area for Fine Particles,” dated November 27, 2012	New Castle County	12/12/2012	<u>Insert Federal Register publication date] [Insert page number where the document begins]</u>	See §52.427(e)

3. Section 52.423 is amended by revising the section heading and by adding paragraph (d) to read as follows:

§ 52.423 Base year emissions inventory.

* * * * *

(d) EPA approves as a revision to the Delaware State Implementation Plan the comprehensive emissions inventory for the Delaware portion of the Philadelphia-Wilmington, PA-NJ-DE 2006 24-hour fine particulate matter (PM_{2.5}) nonattainment area submitted by the Delaware Department of Natural Resources and Environmental Control on December 12, 2012. The 2007 year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources for New Castle County, Delaware. The pollutants that comprise the inventory are nitrogen oxides (NO_x), volatile organic compounds (VOCs), PM_{2.5}, ammonia (NH₃), and sulfur dioxide (SO₂).

4. Section 52.427 is amended by adding paragraphs (d) and (e) to read as follows:

§ 52.427 Control strategy: Particular matter.

* * * * *

(d) EPA approves the maintenance plan for the Delaware portion of the Philadelphia-Wilmington, PA-NJ-DE PM_{2.5} Nonattainment Area (New Castle County) for the 1997 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS) submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control on December 12, 2012. The maintenance plans include motor vehicle emission budgets in tons per year (tpy) used for transportation conformity purposes for New Castle County, Delaware.

New Castle County Motor Vehicle Emissions Budgets for the 1997 Annual PM_{2.5} NAAQS
(tpy)

Type of control strategy SIP	Year	NO _x	PM _{2.5}	Effective date of SIP approval
Maintenance Plan	2017 Interim Budget	6,273	199	[Insert date 30 days from date of publication]
	2025 Final Budget	6,273	199	

(e) EPA approves the maintenance plan for the Delaware portion of the Philadelphia-Wilmington, PA-NJ-DE PM_{2.5} Nonattainment Area (New Castle County) for the 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS) submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control on December 12, 2012. The maintenance plans include motor vehicle emission budgets in tons per year (tpy) used for transportation conformity purposes for New Castle County, Delaware.

New Castle County Motor Vehicle Emissions Budgets for the 2006 24-Hour PM_{2.5} NAAQS
(tpy)

Type of control strategy SIP	Year	NO _x	PM _{2.5}	Effective date of SIP approval
Maintenance Plan	2017 Interim Budget	6,273	199	[Insert date 30 days from date of publication]
	2025 Final Budget	6,273	199	

PART 81 - DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

5. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

6. In §81.308, the tables for Delaware—1997 Annual PM_{2.5} NAAQS [Primary and secondary] and Delaware—2006 24-Hour PM_{2.5} NAAQS [Primary and secondary] are amended by

removing footnote number 2 in each table and revising the entries for the Philadelphia-Wilmington, PA-NJ-DE Area to read as follows:

§ 81.308 **Delaware.**

* * * * *

Delaware—1997 Annual PM_{2.5} NAAQS

[Primary and secondary]

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date	Type
Philadelphia-Wilmington, PA-NJ-DE:				
New Castle County	<u>[Insert Federal Register publication date]</u>	Attainment		
* * * * *				

^aIncludes Indian Country located in each county or area, except as otherwise specified.

¹This date is 90 days after January 5, 2005, unless otherwise noted.

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Delaware—2006 24-Hour PM_{2.5} NAAQS

[Primary and secondary]

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date	Type
Philadelphia-Wilmington, PA-NJ-DE:				
New Castle County	<u>[Insert Federal Register publication date]</u>	Attainment		
* * * * *				

^aIncludes Indian Country located in each county or area, except as otherwise specified.

¹This date is 30 days after November 13, 2009, unless otherwise noted.

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